



January 30, 2004

## HOUSE BILL No. 1300

DIGEST OF HB 1300 (Updated January 29, 2004 7:45 am - DI 105)

**Citations Affected:** IC 12-26; IC 35-36.

**Synopsis:** Insanity defense. Requires notice to be given to certain persons before a defendant who was found not responsible for a crime by reason of insanity and committed to a mental health facility: (1) is allowed outside the facility while not restrained and in custody; (2) is given a new security classification; (3) is transferred to another facility; or (4) is discharged. Requires notice to be given as soon as practicable after the committed individual escapes. Provides that a defendant who interposes a defense of insanity may not introduce evidence from a medical witness with whom the defendant cooperated unless: (1) the defendant cooperates with medical witnesses appointed by the court; or (2) the defendant shows by clear and convincing evidence that the defendant's failure to cooperate with medical witnesses appointed by the court was caused by the defendant's mental illness.

**Effective:** July 1, 2004.

**Bottorff**

January 15, 2004, read first time and referred to Committee on Courts and Criminal Code.  
January 29, 2004, reported — Do Pass.

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HB 1300—LS 6704/DI 69+



January 30, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## HOUSE BILL No. 1300

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A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 12-26-17 IS ADDED TO THE INDIANA CODE  
2       AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2004]:

4       **Chapter 17. Committed Individuals Found Not Responsible by**  
5       **Reason of Insanity**

6       **Sec. 1. If a court orders an individual to be committed under**  
7       **IC 35-36-2-4 and this article following a verdict of not responsible**  
8       **by reason of insanity at the time of the crime, the superintendent**  
9       **of the facility to which the individual is committed or the attending**  
10       **physician shall provide written notice to the prosecuting attorney**  
11       **who filed the petition under IC 35-36-2-4 and to any other person**  
12       **designated by the court:**

13       (1) at least twenty (20) days before:

14       (A) the committed individual is allowed outside the facility  
15       or grounds of the facility while the individual is not  
16       restrained and in custody;

17       (B) the security classification of the committed individual

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1 is changed;

2 (C) the committed individual is transferred to another  
3 facility; or

4 (D) the committed individual is discharged or the  
5 individual's commitment is otherwise terminated; and

6 (2) as soon as practicable after the committed individual  
7 escapes.

8 Sec. 2. A commitment order issued by a court under  
9 IC 35-36-2-4 and this article must include the following:

10 (1) The mailing address, electronic mail address, facsimile  
11 number, and telephone number of the following:

12 (A) The prosecuting attorney who filed the petition under  
13 IC 35-36-2-4.

14 (B) Any other person designated by the court.

15 (2) The notice requirements set forth in section 1 of this  
16 chapter.

17 Sec. 3. If an individual is committed to a facility by a court as  
18 described in section 1 of this chapter, the superintendent of the  
19 facility or the attending physician shall forward a copy of the  
20 review of the committed individual's care and treatment that is  
21 required to be filed with the court under IC 12-26-15-1 to the  
22 following:

23 (1) The prosecuting attorney who filed the petition under  
24 IC 35-36-2-4.

25 (2) Any other person designated by the court.

26 Sec. 4. If an individual who is committed to a facility by a court  
27 as described in section 1 of this chapter was on trial for committing  
28 a crime under IC 35-42, any notices, documents, or other  
29 information provided under this chapter to the prosecuting  
30 attorney who filed the petition under IC 35-36-2-4 may be  
31 distributed by the prosecuting attorney to any of the following:

32 (1) The victim of the crime.

33 (2) The family of the victim.

34 SECTION 2. IC 35-36-2-2 IS AMENDED TO READ AS  
35 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) At the trial of a  
36 criminal case in which the defendant intends to interpose the defense  
37 of insanity, evidence may be introduced to prove the defendant's sanity  
38 or insanity at the time at which the defendant is alleged to have  
39 committed the offense charged in the indictment or information.

40 (b) When notice of an insanity defense is filed, the court shall  
41 appoint two (2) or three (3) competent disinterested psychiatrists,  
42 psychologists endorsed by the state psychology board as health service

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providers in psychology, or physicians, at least one (1) of whom must be a psychiatrist, to examine the defendant and to testify at the trial. This testimony shall follow the presentation of the evidence for the prosecution and for the defense, including testimony of any medical experts employed by the state or by the defense.

**(c) If a defendant does not adequately communicate, participate, and cooperate with the medical witnesses appointed by the court, the defendant may not present as evidence the testimony of any other medical witness:**

**(1) with whom the defendant adequately communicated, participated, and cooperated; and**

**(2) whose opinion is based upon examinations of the defendant;**

**unless the defendant shows by clear and convincing evidence that the defendant's failure to communicate, participate, or cooperate with the medical witnesses appointed by the court was caused by the defendant's mental illness.**

**(d)** The medical witnesses appointed by the court may be cross-examined by both the prosecution and the defense, and each side may introduce evidence in rebuttal to the testimony of such a medical witness.

SECTION 3. IC 35-36-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. **(a)** Whenever a defendant is found not responsible by reason of insanity at the time of the crime, the prosecuting attorney shall file a written petition with the court under IC 12-26-6-2(a)(3) or under IC 12-26-7. If a petition is filed under IC 12-26-6-2(a)(3), the court shall hold a commitment hearing under IC 12-26-6. If a petition is filed under IC 12-26-7, the court shall hold a commitment hearing under IC 12-26-7.

**(b)** The hearing shall be conducted at the earliest opportunity after the finding of not responsible by reason of insanity at the time of the crime, and the defendant shall be detained in custody until the completion of the hearing. The court may take judicial notice of evidence introduced during the trial of the defendant and may call the physicians appointed by the court to testify concerning whether the defendant is currently mentally ill and dangerous or currently mentally ill and gravely disabled, as those terms are defined by IC 12-7-2-96 and ~~IC 12-7-2-130(a)(1)~~. **IC 12-7-2-130(1)**. The court may subpoena any other persons with knowledge concerning the issues presented at the hearing.

**(c)** The defendant has all the rights provided by the provisions of IC 12-26 under which the petition against the defendant was filed. The

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1 prosecuting attorney may cross-examine the witnesses and present  
2 relevant evidence concerning the issues presented at the hearing.

3 **(d) If a court orders an individual to be committed under**  
4 **IC 12-26-6 or IC 12-26-7 following a verdict of not responsible by**  
5 **reason of insanity at the time of the crime, the superintendent of**  
6 **the facility to which the individual is committed and the attending**  
7 **physician are subject to the requirements of IC 12-26-17.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1300, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

DVORAK, Chair

Committee Vote: yeas 10, nays 0.

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